

1 writing I'll file to reconsider later, I guess, I'll point out in  
2 the affidavit where it talks about the anonymity that is expected  
3 by its users, like Mr. Hall and all others, and the encryption  
4 that is involved, that Dr. Levine testified to.

5 In any event, Your Honor. I think it's a complicated  
6 matter. I think it's a serious matter. I think a warrant was  
7 needed from the outset. I think the affidavit is insufficient,  
8 insufficient for a judge to make the probable cause determination  
9 based on the language. I think that a reasonable, reasonably  
10 objective officer in the position of Detective Rees, who's been  
11 trained in, presumably, in the modified Freenet investigation  
12 technique, should have known that it would be important for a  
13 judge to make an independent evaluation based on the number of  
14 blocks requested and the total number of blocks in the file since  
15 that is a critical piece of the information.

16 So for today, I'll leave it at that, Your Honor. I'll  
17 ask the judge to recognize that a warrant should have been issued  
18 at the outset. I will ask the judge to recognize that the  
19 warrant is, affidavit from the perspective, the affidavit is  
20 insufficient from the perspective of an objectively reasonable  
21 officer. I'll ask the judge to recognize that the ultimate  
22 language relates, was conclusory and rendered it impossible for  
23 the judge to make an independent evaluation of probable cause.

24 THE COURT: Well, I'm going to deny the motion to  
25 suppress. To the extent that there's an allegation that the,

1 that the pre-warrant investigation was improper, I credit Dr.  
2 Levine's testimony that Freenet, in terms of what it warns,  
3 makes, makes the information not private, and there's no  
4 expectation of privacy.

5 In terms of the affidavit, it's fully sufficient to  
6 satisfy the elements of probable cause. I will say that even if  
7 it weren't, the issuance of the warrant would be sufficient under  
8 Leon.

9 Pages 7 to 10 of the affidavit are replete with  
10 probable cause to believe that child pornography was involved. I  
11 am not persuaded that the judge had to understand or get into the  
12 number of blocks that were involved. I mean, it's, it's there in  
13 the affidavit. And the judge could rely upon it to establish  
14 probable cause.

15 So I deny the defendant's motion to suppress evidence.

16 MR. BUDLOW: Thank you, Your Honor. Move on to the  
17 next motion, which is the defendant's motion to suppress the  
18 defendant's statement. The government calls Detective Joshua  
19 Rees.

20 MR. FEIN: If I may, just for the record, Your Honor,  
21 just to object to the Court's ruling.

22 THE COURT: Of course.

23 MR. FEIN: In addition, would it be okay with the  
24 Court, I would like to file a motion to reconsider. May I have  
25 time to do so?